

Applicants : R. Scott Repp and Pamela M. Stallman
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priority date based on such earlier applications, under 35 U.S.C. § 120, of September 30, 1993, which is more than one year and five months earlier than the earliest available application date for U.S. 5,853,895. Consequently, it is respectfully submitted that U.S. 5,853,895 is not available as a prior art reference against the present application under any of the sections of 35 U.S.C. § 102 since it clearly was not invented before, published more than a year before, or patented on an application filed by another before the earliest available priority date of the present application.

B) The Present Application and U.S. 5,853,895 are
Commonly-Owned by the Same Company

Moreover, even if U.S. 5,853,895 was, somehow, available as a prior art reference under 35 U.S.C. § 102(e), (f) or (g), the recently amended statute section 35 U.S.C. § 103(c) states that subject matter developed by another person qualifying as prior art only under one or more of §§ (e), (f), and (g) of 35 U.S.C. § 102 shall not preclude patentability where the subject matter and claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

The present application and U.S. 5,853,895 are commonly-owned and were commonly owned on July 31, 2000, when the present application was filed. Hence, even if U.S. 5,853,895 was somehow available as a prior art reference under 35 U.S.C. § 102(e), (f) or (g), which it is not, U.S. 5,853,895 would not be available as a reference under 35 U.S.C. § 103(a) and the present invention would not be made obvious thereby because of 35 U.S.C. § 103(c) which applies to all applications filed on and after November 29, 1999.

C) Summary

Accordingly, for the reasons set forth above, it is respectfully submitted that U.S. 5,853,895 is not available as prior art against the present application and that the rejection of

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claims 2-35 set forth in the Office Action should be withdrawn. It is, therefore, respectfully submitted that claims 2-35 are in condition for allowance and a Notice of Allowance therefor is respectfully requested.

Respectfully submitted,

R. SCOTT REPP ET AL.

By: Van Dyke, Gardner, Linn & Burkhardt, LLP

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Date

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